

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JONATHAN MONSARRAT, )  
Plaintiff, )  
v. ) CIVIL ACTION NO. 17-cv-10356-PBS  
BRIAN ZAIGER )  
Defendant. )

## **AFFIDAVIT OF RICHARD A. GOREN**

I, Richard A. Goren, an attorney admitted to practice before the courts of the Commonwealth of Massachusetts, on oath depose and state as follows:

1. I am counsel to the Plaintiff and defendant in counterclaim, Jonathan Monsarrat (“Monsarrat”). I submit this affidavit in support of Monsarrat’s January 23, 2018 opposition to plaintiff in counterclaim (“Zaiger”)’s January 2, 2018 Motion to compel discovery.

2. Contrary to Zaiger's representation to the Court, Doc. 82 at 2, Monsarrat's October 2, 2017 service on his discovery responses was timely. Pursuant to Fed. R. Civ. P. 6 (d) the last day for service of responses to discovery requests served by mail and email on August 23, 2017 was Monday September 25, 2017. On Friday September 22, 2017 I emailed Zaiger's counsel about an unexpectedly scheduled medical procedure and requested a one week extension. On Sunday Mr. Randazza emailed me that "the extension was fine." On Monday September 25, 2017, I emailed Messrs. Randazza and Wolman stating:

Attached is Rule 29 stipulation reflecting your agreement to a one week extension to October 2d to serve the discovery responses. When you get a chance please sign and return to me.

The attachment was a Rule 29 Stipulation dated September 25, 2017 that I had signed and stated: “Pursuant to Fed. R. Civ. P. 29 … Monsarrat and … Zaiger stipulate and agree … [Monsarrat] may serve his responses to … [Zaiger]’s … Interrogatories and First Request for Production on or before Monday October 2, 2017.” But I never received from Zaiger’s counsel a countersigned stipulation.

3. Regarding the Rule 37(d)(2)(B) certification of defendant in counterclaim’s counsel, I attest that I did not decline to confer about Zaiger’s discovery on October 3, 6, or 23 2017. I attest further the parties scheduled a LR 7.1 conference for October 30, 2017 concerning Zaiger’s contemplated motion to dismiss Monsarrat’s Amended Complaint. After a discussion on that subject of the scheduled conference about the amended complaint, I refused Zaiger’s counsel unilateral insistence that we then confer on their 119 requests for production and start with Request number 1.

EXECUTED UNDER THE PENALTIES OF PERJURY THIS 23<sup>rd</sup> DAY OF JANUARY , 2017.

*/s/Richard A. Goren*  
Richard A. Goren

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), on January 23, 2018.

*/s/ Richard A. Goren*